

MIKULSKI
KENNEDY
CORZINE
COLEMAN

H C 3, 5, 6, 7

PENDING

AMENDMENT NO. _____

Calendar No. _____

Purpose: To protect United States workers from competition
of foreign workforces for performance of Federal and
State contracts.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 1637

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AMENDMENT No.

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By Dodd + othersTo: S. 1637

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Page(s)

GPO: 2002 83-247(Mac)

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. DODD

Viz:

1 At the end of the bill, add the following:

Coleman
Kennedy
Corzine
Mikulski

1 **TITLE V—PROTECTION OF**
2 **UNITED STATES WORKERS**
3 **FROM COMPETITION OF FOR-**
4 **EIGN WORKFORCES**

5 **SEC. 501. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
6 **CONTRACTS.**

7 (a) LIMITATIONS.—

8 (1) IN GENERAL.—The Office of Federal Pro-
9 curement Policy Act (41 U.S.C. 403 et seq.) is
10 amended by adding at the end the following new sec-
11 tion:

12 **“SEC. 42. LIMITATIONS ON OFF-SHORE PERFORMANCE OF**
13 **CONTRACTS.**

14 “(a) CONVERSIONS TO CONTRACTOR PERFORMANCE
15 OF FEDERAL ACTIVITIES.—An activity or function of an
16 executive agency that is converted to contractor perform-
17 ance under Office of Management and Budget Circular
18 A-76 may not be performed by the contractor or any sub-
19 contractor at a location outside the United States except
20 to the extent that such activity or function was previously
21 performed by Federal Government employees outside the
22 United States.

23 “(b) OTHER FEDERAL CONTRACTS.—(1) A contract
24 that is entered into by the head of an executive agency
25 may not be performed outside the United States except

1 to meet a requirement of the executive agency for the con-
2 tract to be performed specifically at a location outside the
3 United States.

4 “(2) ~~The President may waive~~ ^{does not apply} The prohibition in
5 paragraph (1) in the case of a contract of an executive
6 agency if—

7 “(A) the President determines in writing that it
8 is necessary in the national security interests of the
9 United States for the contract to be performed out-
10 side the United States; or

11 “(B) the head of such executive agency ^{makes a determination} ~~certifies~~
12 ^{and reports such determination on a timely basis} to the Director of the Office of Management and
13 Budget that—

14 “(i) the property or services needed by the
15 executive agency are available only by means of
16 performance of the contract outside the United
17 States; and

18 “(ii) no property or services available by
19 means of performance of the contract inside the
20 United States would satisfy the executive agen-
21 cy's need.

22 “(3) Paragraph (1) does not apply to the perform-
23 ance of a contract outside the United States under the
24 exception provided in subsection (a).

1 “(c) STATE CONTRACTS.—(1) Except as provided in
2 paragraph (2), funds appropriated for financial assistance
3 for a State may not be disbursed to or for such State dur-
4 ing a fiscal year unless the chief executive of that State
5 has transmitted to the Administrator for Federal Procure-
6 ment Policy, not later than April 1 of the preceding fiscal
7 year, a written certification that none of such funds will
8 be expended for the performance outside the United States
9 of contracts entered into by such State.

10 “(2) The prohibition on disbursement of funds to or
11 for a State under paragraph (1) does not apply with re-
12 spect to the performance of a State contract outside the
13 United States if—

14 “(A) the chief executive of such State—

15 “(i) determines that the property or serv-
16 ices needed by the State are available only by
17 means of performance of the contract outside
18 the United States and no property or services
19 available by means of performance of the con-
20 tract inside the United States would satisfy the
21 State’s need; and

22 “(ii) transmits a notification of such deter-
23 mination to the head of the executive agency of
24 the United States that administers the author-

1 ity under which such funds are disbursed to or
2 for the State; and

3 “(B) the head of the executive agency receiving
4 the notification of such determination—

5 “(i) confirms that the facts warrant the
6 determination;

7 “(ii) approves the determination; and

8 “(iii) transmits a notification of the ap-
9 proval of the determination to the Director of
10 the Office of Management and Budget.

11 “(3) In this subsection, the term ‘State’ means each
12 of the several States of the United States, the District
13 of Columbia, the Commonwealth of Puerto Rico, the Com-
14 monwealth of the Northern Mariana Islands, the Virgin
15 Islands, Guam, American Samoa, and the Trust Territory
16 of the Pacific Islands.

17 “(d) RESPONSIBILITIES OF OMB.—The Director of
18 the Office of Management and Budget shall—

19 “(1) maintain—

20 “(A) the waivers granted under subsection
21 (b)(2), together with the determinations and
22 certifications on which such waivers were based;
23 and

24 “(B) the notifications received under sub-
25 section (c)(2)(B)(iii); and

*“(a) subsections (b) and (c) shall not apply to
procurement covered by
the WTO
Government
Procurement
Agreement*

1 “(2) submit to Congress promptly after the end
2 of each quarter of each fiscal year a report that sets
3 forth—

4 “(A) the waivers that were granted under
5 subsection (b)(2) during such quarter; and

6 “(B) the notifications that were received
7 under subsection (c)(2)(B)(iii) during such
8 quarter.

9 “(F) ANNUAL GAO REVIEW.—The Comptroller Gen-
10 eral shall—

11 “(1) review, each fiscal year, the waivers grant-
12 ed during such fiscal year under subsection (b)(2)
13 and the disbursements of funds authorized pursuant
14 to the exception in subsection (c)(2); and

15 “(2) promptly after the end of such fiscal year,
16 transmit to Congress a report containing a list of
17 the contracts covered by such waivers and exception
18 together with a brief description of the performance
19 of each such contract outside the United States.”.

20 (2) CLERICAL AMENDMENT.—The table of sec-
21 tions in section 1(b) of such Act is amended by add-
22 ing at the end the following new item:

“Sec. 42. Limitations on off-shore performance of contracts.”.

23 (b) INAPPLICABILITY TO STATES DURING FIRST
24 TWO FISCAL YEARS.—Section 42(c) of the Office of Fed-
25 eral Procurement Policy Act (as added by subsection (a))

1 shall not apply to disbursements of funds to a State dur-
2 ing the fiscal year in which this Act is enacted and the
3 next fiscal year.

4 **SEC. 502. REPEAL OF SUPERSEDED LAW.**

5 Section 647 of the Transportation, Treasury, and
6 Independent Agencies Appropriations Act, 2004 (division
7 F of Public Law 108-199) is amended by striking sub-
8 section (e).

9 **SEC. 503. EFFECTIVE DATE AND APPLICABILITY.**

10 This title and the amendments made by this title
11 shall take effect 30 days after the date of the enactment
12 of this Act and, subject to subsection (b) of section 501,
13 shall apply with respect to ^{new} contracts entered into on or
14 after such date.